TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

RAYMOND H. BOWMAN.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 19, 1921

(28241)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 884.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

RAYMOND H. BOWMAN.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 5 to 43, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of United States of America, plaintiff in error, against Raymond H. Bowman, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 9th day of April, in the year of our Lord one thousand nine hundred and twenty-one, and of the independence of the United States the one hundred and forty-fifth.

[SEAL.] ALEX GILCHRIST, JR.
Clerk.

5 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The grand jurors for the United States of America, duly empaneled and sworn in the District Court of the United States for the Southern District of New York and inquiring for that district, upon their oath present:

1. That during all the times hereinafter mentioned the steamship "Dio" (hereinafter called S. S. "Dio") was a vessel belonging to the United States of America; the United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation), a corporation in which the United States of America is and was a stockholder, had contracted for the operation and management of said vessel with the National Shipping Corporation, a corporation; the National Shipping Corporation was operating and managing said S. S. "Dio" on behalf of the Fleet Corporation under contract, whereby the expenses for fuel oil and for labor and material for repairs and replacements for and to said S. S. "Dio" were to be paid by said Fleet Corporation; E. Johnston & Company, Ltd., were the agents of the National Shipping Corporation at Rio de Janeiro, Brazil; the Standard Oil Company of Brazil was a dealer in fuel oil at Rio de Janeiro, Brazil; Rupert Wry was a citizen of the United States and master of said S. S. "Dio"; Raymond H. Bowman was a citizen of the United States and chief engineer of the S. S. "Dio"; H. B. Hankinson (his full first name being to the grand jurors unknown) was a citizen of the United States and a representative of the Standard Oil Company of Brazil at the port of Rio de Janeiro, Brazil; M. R. Millar was a subject of the

6 Kingdom of Great Britain and Ireland, and a merchant, ship repairer, and engineer of the city of Rio de Janiero, Brazil.

2. That heretofore, to wit, continuously and at all times from October 11, 1919, to and including January 1, 1920, upon the high

seas and out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, but within the admiralty and maritime jurisdiction of the United States, and on board said S. S. "Dio," the aforesaid Rupert Wry, Raymond H. Bowman, H. B. Hankinson, and M. R. Millar, hereinafter referred to as the defendants, each well knowing all the matters and things herein alleged, did knowingly, willfully, and unlawfully enter into an agreement, combination, and conspiracy to defraud a corporation in which the United States of America is and was a stockholder, to wit, the said Fleet Corporation, by obtaining and aiding to obtain the payment and allowance of a false and fraudulent claim against said Fleet Corporation.

3. It was a part of the said conspiracy that the defendants Wry and Bowman should by wireless telegraph notify E. Johnston and Company, Ltd., that they would require at Rio de Janerio one thousand tons of fuel oil for the use of said S. S. "Dio"; it was further a part of said conspiracy that an order for account of said Fleet Corporation for one thousand tons of fuel oil should thereupon be given to the Standard Oil Company of Brazil, and that the defendant Hankinson should accept said order on behalf of the Standard Oil Company of Brazil, and should charge said vessel therefor, but should deliver on account of said order only six hundred tons of said fuel oil to said vessel; it was further a part of said conspiracy that the defendant should cause only six hundred tons of fuel oil to be placed on board said vessel, but should cause an invoice in the name of the Standard Oil Company of Brazil for one thousand tons of fuel oil, and a receipt signed by the defendants Wry and Bowman for one thousand tons of fuel oil, to be presented to E. Johnston & Company, Ltd., and should thereby falsely represent and pretend that one thousand tons of fuel oil had been delivered to said vessel, and that the defendants Wry and Bowman should approve the payment of such invoice by the said E. Johnston & Company, Ltd., and that the defendants should thereby procure the said E. Johnston & Company, Ltd., on behalf and for the account of said Fleet Corporation, to pay the amount of said invoice in the form of a check made payable to bearer on a local bank at Rio de Janeiro, Brazil, and that the defendant M. R. Millar should cause this check to be presented for payment at the bank upon which it was drawn, and should obtain payment upon the same in cash; and that said defendants should cause to be paid to the Standard Oil Company of Brazil an amount in cash equal to the price of six hundred tons of fuel oil, and should divide among themselves the amount in cash remaining from the proceeds of said check, to wit, the amount equal to the price for four hundred tons of fuel oil, and should fraudulently conver the said money to their own use; it was further a part of the said conspiracy that false reports to agents and representatives of the National Shipping Corporation should be made by the defendants Wry and Bowman, showing the receipt of one thousand tons of fuel at the port of Rio de Janeiro by the

poration should be made by the defendants Wry and Bowman, showing the receipt of one thousand tons of fuel oil at the Port of Rio de Janeiro by the S. S. "Dio," so as to conceal and cover up the facts that only six hundred tons of fuel oil had been delivered to said steamship; that four hundred additional tons had been paid for, and that the defendants had fraudulently converted the money so paid to their own use, so that in due course of the settlement of accounts the said Fleet Corporation should allow and pay a false and fraudulent claim for four hundred tons of fuel oil.

Over acts.

4. That in furtherance of said agreement, combination, and conspiracy, and to effect the object thereof, on board said S. S. "Dio" upon the high seas and out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, but within the admiralty and maritime jurisdiction of the United States, the following overt acts were committed, to wit:

12 (1) On October 29, 1919, the defendants Wry and Bowman did discuss orally with each other the matter of concealing the short delivery of four hundred tons of fuel oil to said S. S. "Dio";

(2) On October 30, 1919, the defendant Wry did send a wireless message of the tenor following to said E. Johnston & Company, Ltd.:

"Received your message Oct. 29th after wiring you. Will arrive 7 a. m. Oct. 31st. Require about 1,000 tons of fuel oil";

(3) On October 31, 1919, the defendants Millar and Hankinson did go on board said S. S. "Dio" and there converse with the defendants Wry and Bowman;

(4) On December 1, 1919, the defendant Wry did send a wireless message to the defendant Millar at Rio de Janeiro, Brazil;

(5) On November 14, 1919, the defendants Wry and Bowman did cause false reports to be made showing receipt by the S. S. "Dio" of 1,000 tons of fuel oil;

5. In furtherance of said agreement, combination, and conspiracy, and to effect the object thereof, out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, at the city of Rio de Janeiro, Brazil, the following overt acts were committed, to wit:

(1) On November 6, 1919, the defendant Hankinson made out in the name of the Standard Oil Company of Brazil an invoice for 1,000 tons of fuel oil for the S. S. "Dio," the defendant Wry signed said invoice, and the defendants Wry and Bowman signed a receipt for 1,000 tons of fuel oil;

(2) On November 7, 1919, the defendant Hankinson received from E. Johnston & Company, Ltd., a check in payment of said invoice, the defendant Millar caused said check to be cashed, and all the defendants participated in dividing the proceeds of said check;

13 Against the peace of the United States and their dignity

and contrary to the form of the statute of the United States in such case made and provided. (§ 35, U. S. C. C.)

That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York since the commission of the offense herein charged. (§ 41, U. S. J. C.)

Third count.

1. And the grand jurors aforesaid, on their oath aforesaid, do further present, incorporating and realleging in this count as if herein again set forth in full, all the matters and things contained in paragraph numbered "1" of the first count of this indictment;

2. That heretofore, to wit, continuously and at all times from October 11, 1919, to and including January 1, 1920, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States, at the city of Rio de Janeiro, Brazil, the aforesaid Rupert Wry, Raymond H. Bowman, H. B. Hankinson, and M. R. Millar, hereinafter referred to as the defendants, each well knowing all the matters and things herein alleged, did knowingly, wilfully, and unlawfully enter into an agreement, combination, and conspiracy to defraud a corporation in which the United States of America is and was a stockholder, to wit, the said Fleet Corporation, by obtaining and aiding to obtain the payment and allowance of a false and fraudulent claim against said Fleet Corporation;

14 3. It was a part of the conspiracy that the defendants Wry and Bowman should by wireless telegraph notify E. Johnston & Company, Ltd., that they would require at Rio de Janeiro one thousand tons of fuel oil for the use of said S. S. "Dio"; it was further a part of said conspiracy that an order for account of said Fleet Corporation for one thousand tons of fuel oil should thereupon be given to the Standard Oil Company of Brazil, and that the defendant Hankinson should accept said order on behalf of the Standard Oil Company of Brazil, and should charge said vessel therefor, but should deliver on account of said order only six hundred tons of said fuel oil to said vessel; it was further a part of said conspiracy that the defendants should cause only six hundred tons of fuel oil to be placed on board said vessel, but should cause an invoice in the name of the Standard Oil Company of Brazil for one thousand tons of fuel oil, and a receipt signed by the defendants Wry and Bowman for one thousand tons of fuel oil, to be presented to E. Johnston & Company, Ltd., and should thereby falsely represent and pretend that one thousand tons of fuel oil had been delivered to said vessel, and that the defendants Wry and Bowman should approve the payment of such invoice by the said E. Johnston & Company, Ltd., and that the defendants should thereby procure the

said E. Johnston & Company, Ltd., on behalf and for the account of said Fleet Corporation, to pay the amount of said invoice in the form of a check made payable to bearer on a local bank at Rio de Janeiro, Brazil, and that the defendant M. R. Millar should cause this check to be presented for payment at the bank upon which it was drawn, and should obtain payment upon the same in cash,
15 and that said defendants should cause to be paid to the Standard Oil Company of Brazil an amount in cash equal to the price of six hundred tons of fuel oil, and should divide among themselves the amount in cash remaining from the proceeds of said check, to wit, the amount equal to the price for four hundred tons of fuel oil, and should fraudulently convert the said money to their own use; it was further a part of the said conspiracy that false reports to agents and representatives of the National Shipping Corporation should be made by the defendants Wry and Bowman, showing the receipt of one thousand tons of fuel oil at the port of Rio de Janeiro by the S. S. "Dio," so as to conceal and cover up the facts that only six hundred tons of fuel oil had been delivered to said steamship; that four hundred additional tons had been paid for, and that the defendants had fraudulently converted the money so paid to their own use, so that in due course of the settlement of accounts the said Fleet Corporation should allow and pay a false and fraudulent claim for four hundred tons of fuel oil.

Overt acts.

4. In furtherance of said agreement, combination, and conspiracy, and to effect the object thereof, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States at the city of Rio de Janeiro, Brazil, the following overt acts were committed, to wit:

(1) On November 6, 1919, the defendant Hankinson made out in the name of the Standard Oil Company of Brazil an invoice for 1,000 tons of fuel oil for the S. S. "Dio," the defendant Wry signed said invoice, and the defendants Wry and Bowman signed a receipt for 1,000 tons of fuel oil;

16 (2) On November 7, 1919, the defendant Hankinson received from E. Johnston & Company, Ltd., a check in payment of said invoice, the defendant Millar caused said check to be cashed, and all the defendants participated in dividing the proceeds of said check;

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Section 35, U. S. C. C.)

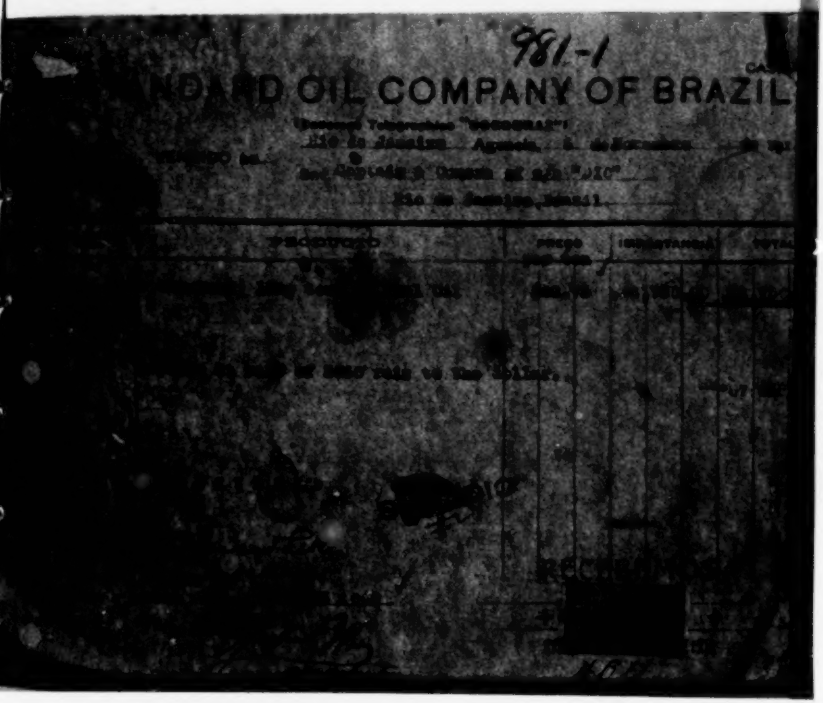
That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York

since the commission of the offense herein charged. (Section 41, U. S. J. C.)

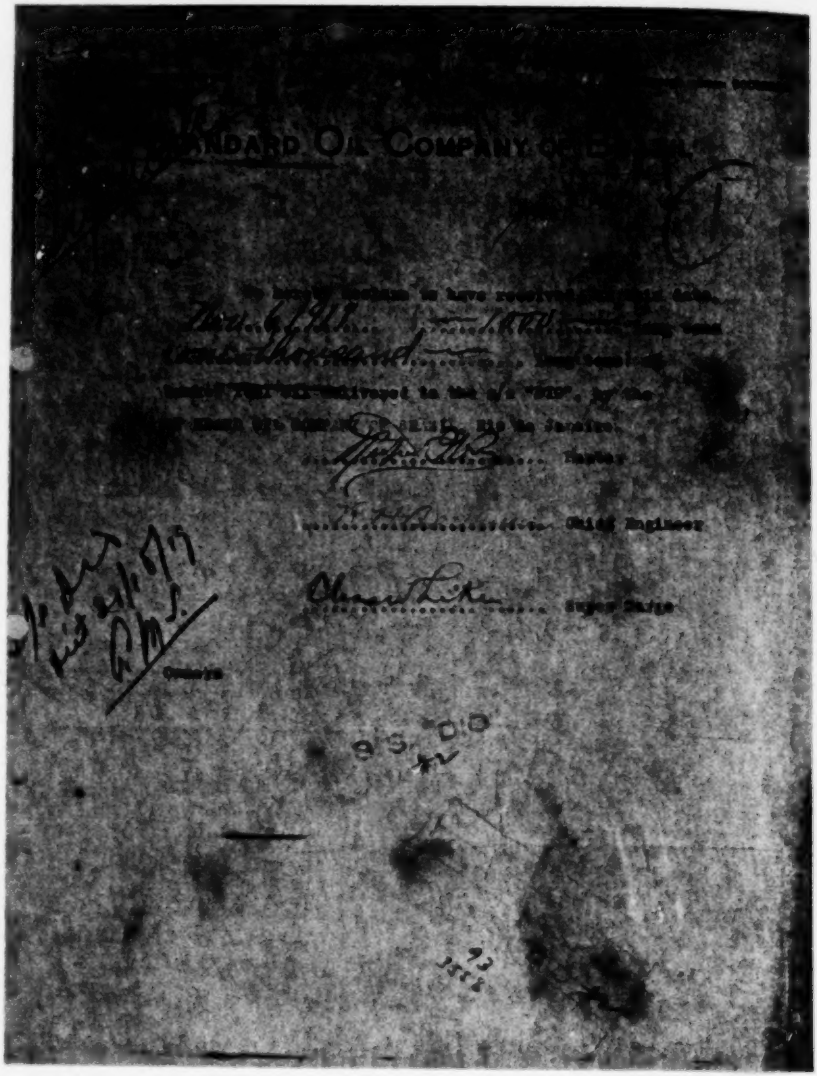
Fourth count.

And the grand jurors aforesaid, on their oath aforesaid, do further present, reincorporating and realleging in this count as if herein again set forth in full all the matters and things contained in paragraph numbered "1" of the first count of this indictment:

That theretofore, to wit, on November 6, 1919, out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, but within the admiralty and maritime jurisdiction of the United States, on board said S. S. "Dio," at the port of Rio de Janeiro, Brazil, the aforesaid Reupert Wry, Raymond H. Bowman, and H. B. Hankinson, and M. R. Millar, hereinafter referred to as the defendants, each well
17 knowing all the matters and things herein alleged, did knowingly, wilfully, and unlawfully, in the name of the Standard Oil Company of Brazil, make and cause to be made, for payment and approval, a claim against the said Fleet Corporation, a corporation in which the United States of America is and then was a stockholder, knowing such claim to be false, fictitious, and fraudulent, in that they did make and cause to be made an invoice of the tenor following, to wit:



and a receipt of the tenor following to wit:



18 which said invoice and receipt were false, fictitious, and fraudulent in that only six hundred tons of fuel oil were delivered by the Standard Oil Company of Brazil to said vessel, and which said invoice and receipt were a claim against said E. Johnston & Company, Ltd., agents for the National Shipping Corporation, for

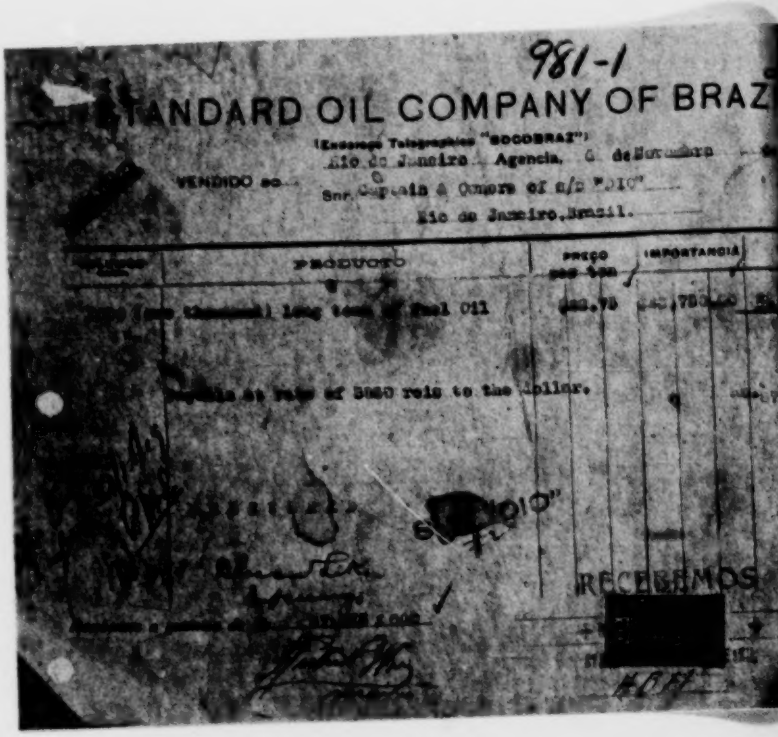
payment and approval on behalf of and for the account of the Fleet Corporation and so were a claim against said Fleet Corporation; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§35, U. S. C. C.)

That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York since the commission of the offense herein charged. (§41, U. S. J. C.)

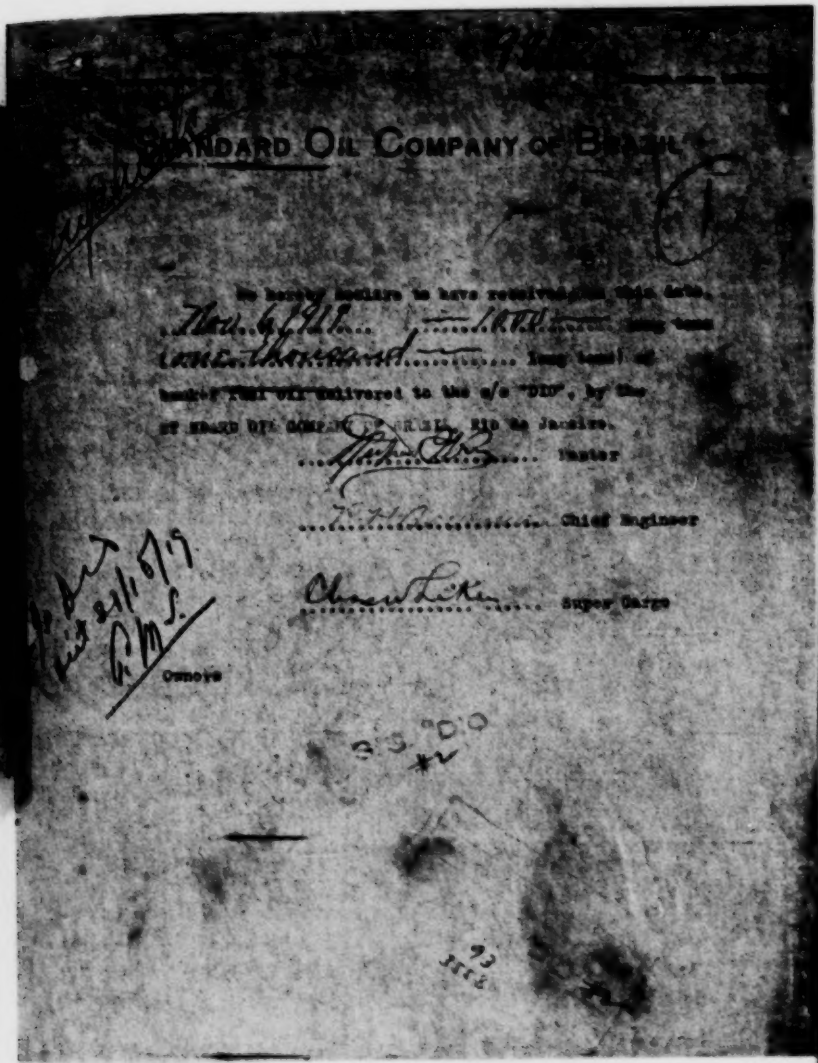
Fifth count.

And the grand jurors aforesaid, on their oath aforesaid, do further present, reincorporating and realleging in this count as if herein again set forth in full all the matters and things contained in paragraph numbered "1" of the first count of this indictment:

That heretofore, to wit, on November 6, 1919, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States, at the city of Rio de
19 Janeiro, Brazil, the aforesaid Rupert Wry, Raymond H. Bowman, H. B. Hankinson, and M. R. Millar, hereinafter referred to as the defendants, each well knowing all the matters and things herein alleged, did knowingly, wilfully, and unlawfully, in the name of the Standard Oil Company of Brazil, present and cause to be presented to said Fleet Corporation, for payment and approval, a claim against the said Fleet Corporation, a corporation in which the United States of America is and was a stockholder, knowing such claim to be false, fictitious, and fraudulent, in that they did make and cause to be made an invoice of the tenor following, to wit:


981-1
STANDARD OIL COMPANY OF BRAZ
(Endereço Telegraphico "SOCOBRAZ")
Rio de Janeiro Agencia, 6 de
VENDIDO ao
Snr. Capitain & Owners of s/s "
Rio de Janeiro, Brazil.
PRODUCTO
PREÇO por ton
IMPORTANCIA
Long tons of Fuel Oil
at rate of 3960 reis to the dollar.
RECEBEMOS

and a receipt of the tenor following, to wit:


STANDARD OIL COMPANY OF BRAZIL

Master

Chief Engineer

Super Cargo

Canoya

20 which said invoice and receipt were false, fictitious, and fraudulent, in that only six hundred tons of fuel oil was delivered by the Standard Oil Company of Brazil to said vessel, and which said invoice and receipt were presented by the said defendants to E. Johnston & Company, Ltd., agents for the National Shipping Cor-

poration, for payment and approval on behalf of and for the account of the Fleet Corporation, and so were then and there presented to said Fleet Corporation; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 35, U. S. C. C.)

That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York since the commission of the offense herein charged. (Sec. 41, U. S. J. C.)

Sixth count.

And the grand jurors aforesaid, on their oath aforesaid, do further present, reincorporating and realleging in this count as if herein again set forth in full all the matters and things contained in paragraph numbered "1" of the first count of this indictment:

That heretofore, to wit, on November 6, 1919, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States, at the port and at the city of Rio de Janerio, Brazil, the aforesaid Rupert Wry, Raymond H. Bowman, H. B. Hankinson, and M. R. Millar, hereinafter
21 referred to as the defendants, each well knowing all the matters and things herein alleged, did knowingly, wilfully, and unlawfully, for the purpose of obtaining and aiding to obtain the payment and approval of a claim against the Fleet Corporation for supplying to the S. S. "Dio" one thousand tons of fuel oil and for the purpose of cheating and swindling and defrauding the Fleet Corporation, a corporation in which the United States of America is and then was a stockholder, falsify, conceal, and cover up by trick, scheme, and device a material fact, in that the said defendants did make and cause to be made an invoice in the name of the Standard Oil Company of Brazil for one thousand tons of fuel oil, and the defendants Rupert Wry and Raymond H. Bowman did make and cause to be made a receipt showing the delivery of one thousand tons of fuel oil —— the S. S. "Dio," by the Standard Oil Company of Brazil, whereas in truth and in fact, as each of the defendants well knew, only six hundred tons of fuel oil were delivered by said Standard Oil Company of Brazil to the S. S. "Dio," and the said defendants did procure the payment on behalf of said Fleet Corporation by E. Johnston & Co., Ltd., of said invoice for one thousand tons of fuel oil, and did pay over to the Standard Oil Company of Brazil an amount of money equal to the value of said six hundred tons of fuel oil actually delivered to the S. S. "Dio," and did divide among themselves and fraudulently convert to their own use the remaining money, to wit, an amount equal to the value of four hundred tons of fuel oil, and so, for the purposes aforesaid,

did conceal and cover up the fact that only six hundred tons of fuel oil were delivered to the S. S. "Dio"; against the peace of the United States and their dignity and contrary to the form
22 of the statute of the United States in such case made and provided. (§35, U. S. C. C.)

That the Southern District of New York is the district in which defendants Wry and Bowman and Hankinson were found, and into which they were first brought after the commission of the offense herein charged, but that the defendant M. R. Millar has not been brought into or found within the Southern District of New York since the commission of the offense herein charged. (§41, U. S. J. C.)

FRANCIS G. CAFFEY,
United States Attorney.

A true bill: Richard B. Sperry, foreman.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Oct. 5, 1920.

23 UNITED STATES DISTRICT COURT,
Southern District of New York.

THE UNITED STATES OF AMERICA
against
RUPERT WRY, RAYMOND H. BOWMAN, H. B. HANKINSON, and M. R. Millar.

Defendant Raymond H. Bowman demurs to the indictment herein and to each and every count of said indictment, and for his ground of demurrer he says that it appears on the face thereof that the court has no jurisdiction of the subject of the action:

First. That it is not alleged, nor does it appear in the said indictment nor in any count thereof, that any act or crime alleged in said indictment nor in any count thereof was committed within the jurisdiction of the United States nor within the jurisdiction of any particular State thereof.

Second. That it does appear by the said indictment and by each and every count thereof that the acts and crimes alleged in said indictment and in each and every count thereof were committed without the jurisdiction of the United States and every State thereof; that is to say, that the said acts and alleged crimes set forth in the said indictment and each and every count thereof were committed within the jurisdiction of the Republic of Brazil.

GEORGE A. HOPKINS,
Attorney for Bowman,
#233 Broadway, Manhattan, New York City.

24 CITY OF NEW YORK,
County of New York, State of New York, ss:

Raymond H. Bowman, being duly sworn, deposes and says that he is one of the defendants herein; that he has read the foregoing

demurrer and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

RAYMOND H. BOWMAN.

Sworn to before me this 26th day of October, 1920.

RUTH KAMINSKY,
Notary Public, etc.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed October 27, 1920.

25 UNITED STATES DISTRICT COURT,

Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
against
RAYMOND H. BOWMAN ET AL., DEFENDANTS.

George A. Hopkins, of New York City, for defendants.

Francis G. Caffey, United States attorney (Ben A. Matthews and Henry E. Kelley, assistant U. S. attorneys), opposed.

MAYER, *District Judge:*

This demurrer brings up the question whether this court has jurisdiction of the offenses denounced by section 35 of the United States Criminal Code if committed by a citizen of this country on board an American vessel upon the high seas.

During the period covered by the indictment, between October, 1919, and January, 1920, the steamship "Dio" belonged to the Government. The United States owned and owns all the stock in the United States Shipping Board Emergency Fleet Corporation.

26 The National Shipping Corporation agreed to operate and manage the "Dio" on behalf of the Fleet Corporation. Under the contract the expenses for fuel, oil, labor, and materials were to be paid by the Fleet Corporation.

There are four defendants. One defendant was master of the ship. Demurrant, a citizen of the United States, was the chief engineer. Another defendant was the representative at Rio de Janeiro, Brazil, of the Standard Oil Company of Brazil, a dealer in fuel oil there. Another defendant was a merchant ship repairer and engineer at Rio de Janeiro. Johnston & Company, not a party hereto, was the agent of the Shipping Corporation at Rio de Janeiro.

The indictment is in six counts. All of them are laid under section 35 of the Criminal Code. (Note.)[1]

[1](Note.) Section 35 of the Criminal Code, as amended Oct. 23, 1918 (40 Stat., 1015), is as follows:

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service

28 Each charges an offense under that section committed outside of the territory of the Southern District of New York. In the way hereinafter stated, in general, it may be said that it is alleged that the conduct complained of occurred either on the high seas or in the harbor of Rio de Janiero or at Rio de Janiero.

In each count it is alleged, in accordance with section 41 of the Judicial Code, that the Southern District of New York is the district in which three defendants, including Bowman, were found and into which they were first brought after the commission of the offense; also that the fourth defendant has not been brought into or found within this district.

Bowman by demurrer to the indictment as a whole and to each count has challenged this court's jurisdiction.

The indictment.

The substance of the offense charged in the first, second, and third counts is a conspiracy to defraud the Fleet Corporation by obtaining

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of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or
27 representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than $500 or imprisoned not more than two years, or both.

and aiding to obtain payment or allowance of a false and fraudulent claim against that corporation.

The crime alleged is illustrated by the first count. The essence of the scheme was this: The master and Bowman, the chief engineer of the "Dio," would send a wireless message to Johnston & Company, the agent at Rio de Janiero of the Shipping Corporation, which operated the vessel, that upon its arrival at that port 1,000 tons of fuel oil would be needed for their ship. An order for that quantity would be given to the oil company, the dealer in that city. One of the defendants, the representative of the oil company, would accept the order and charge the vessel for the full amount, but deliver only 600 tons. The invoice would be made out in the name of the dealer for 1,000 tons. The master and Bowman would receipt for 1,000 tons and approve payment of the invoice. In this way Johnston & Company, for account of the Fleet Corporations, would be led to give their check on a local bank at Rio de Janiero, payable to bearer, in an amount sufficient to cover the invoice. The merchant ship repairer at Rio (and the defendant) would get the check cashed. The oil company would then be paid for the 600 tons actually sold and delivered. The balance, equivalent to the price of 400 tons, would be divided among the defendants. In due coarse false reports of the transaction would be made, and the Fleet Corporation, in reliance upon these, would pay the whole claim, fraudulent to the extent of the sum converted by the defendants to their own use.

The fourth count describes the offense as making and causing to be made for payment and approval a knowlingly false, fictitious, and fraudulent claim against the Fleet Corporation. The fifth charges the presentation of the same calm and the causing it to be presented to the Fleet Corporation. The sixth charges that the defendants knowingly and wilfully falsified, concealed, and covered up by trick, scheme, and device a material fact in the presentation of this claim to the Fleet Corporation for the purpose and with the intent of cheating, swindling, and defrauding the Government and to obtain and aid in obtaining payment thereof.

The *locus* at which took place the acts relied upon as constituting crimes is variously described in the several counts.

In the first court it is alleged that the conspiracy occurred on the high seas on board the "Dio," and out of the jurisdiction of any particular State or of any district of the United States, but within the admiralty and maritime jurisdiction of the United States.

The second alleges that the same conspiracy occurred upon the high seas and elsewhere out of the jurisdiction of any particular State or of any district of the United States, but within the admiralty and marine jurisdiction of the United States, to wit, on board the "Dio" on the high seas and at the port of Rio de Janiero, as well as in that city.

The third alleges that the offense took place at the city of Rio de Janiero, out of the jurisdiction of any particular State or the territorial jurisdiction of any district of the United States.

31 The fourth alleges that the offense of making the false claim occurred on board the "Dio" at the port of Rio de Janiero, out of the jurisdiction of any particular State or of any district of the United States but within the admiralty and maritime jurisdiction of the United States.

The fifth alleges that presentation of the false claim was at the city of Rio de Janiero, out of the jurisdiction of any particular State of the United States and out of the territorial jurisdiction of any district of the United States.

The sixth alleges that the misconduct was at the port and at the city of Rio de Janiero, out of the jurisdiction of any particular State and out of the territorial jurisdiction of any district of the United States.

The demurrer.

The substance of the grounds of the demurrer to the indictment and every count is that—

(1) It is not alleged that the offense was committed within the jurisdiction of the United States or of any particular State thereof.

(2) It appears that the misconduct complained of was committed without the jurisdiction of the United States or of any State thereof, and within the jurisdiction of the Republic of Brazil.

The issue.

32 It is not claimed by the demurrer that the substantive matter incorporated in any of the counts is insufficient to state a complete offense under section 35 of the Criminal Code. An examination of the indictment will disclose that each count avers every element required by the statute to constitute a violation.

No objection is made to the venue. If any Federal court has jurisdiction to proceed, the Southern District of New York is the correct forum. The demurrant was found in and first brought into this district upon the return of the "Dio" from the voyage during which the occurrences complained of transpired. There are appropriate allegations to this effect in each count, in conformity with section 41 of the Judicial Code.

The sole basis of demurrant's contention is that the *locus in quo* affirmatively shown negatives this court's jurisdiction.

The first count relates only to the high seas on board the "Dio"; the second to the same and at the port of Rio de Janiero. The fourth covers what occurred on board the ship while in port at Rio de Janiero. The third and fifth deal only with transactions at the city of Rio de Janiero, wholly within the Republic of Brazil; the sixth with transactions at the port and city of Rio de Janiero.

One of the accepted functions of a sovereign is to regulate the ships under its flag on the high seas and the conduct of its
33 citizens while on those ships. That authority has been exercised, and repeatedly sustained by the courts.

Crapo v. *Kelly*, 16 Wall. 610, 623–632.
U. S. v. *Rodgers*, 150 U. S. 247, 260–1, 264–5.
The Hamilton, 207 U. S. 398, 403, 405.
American Banana Co. v. *United Fruit Co.*, 213 U. S. 347.
Wilson v. *McNamee*, 102 U. S. 572, 574.
U. S. v. *Smiley*, 6 Sawyer 640, 645; 27 Fed. Cases, No. 16, 317, pp. 1132, 1134.

That Congress has power to enact legislation such as that embodied in section 35 of the Criminal Code, applicable upon the high seas, if it so determines, is plain. It may be based on any one of several express provisions of the Constitution. Among these are three embraced in Article I, section 8, to wit: (1) Clause 3, relating to the regulation of foreign commerce; (2) clause 10, authorizing the definition of felonies on the high seas; (3) clause 18, sanctioning the passage of all laws required for the effective exercise of the powers of the Government, and hence all such as the Congress may deem essential for the protection of the Government or of its agencies or property.

Ordinarily, however, and *prima facie*, the criminal laws of the United States are effective only within the territory of the United States. For that purpose, however, the high seas, outside a marine league from the shores and outside the jurisdiction of any particular State, are constructively a part of such territory. Indeed, the high seas are a part peculiarly within the jurisdiction of the
34 United States in the application of its criminal laws, as distinguished from the States and their laws.

U. S. v. *Smiley*, *supra*.
St. Clair v. *U. S.*, 154 U. S. 134, 152.
In re Moncan, 14 Fe. 44, 48.
U. S. v. *Rodgers*, *supra*.

When, however, the Congress has intended that its laws shall be operative on the high seas, it has so stated.

Chapters eleven and twelve of the United States Criminal Code refer to the high seas. Chapter four, in which section 35 here under consideration is included, does not.

Jurisdiction of criminal offenses must be conferred upon the United States courts. It is never inferred. The question, thus, is not one of power, but one of statutory construction. Section 35 was amended in certain respects on October 23, 1918, but prior thereto it had been long in existence. Yet, never so far as appears, has there heretofore been any case in which this section has been invoked to punish the offences denounced if committed on the high seas or in a foreign country. In the absence, therefore, of language extending the *locus* of the crime to the high seas or beyond the territory of the

United States, the court and not the Congress would be writing the statute, if it gave to it the construction urged by the Government.

35 My attention has been called to the opinion of the Acting Attorney General dated November 1, 1920, in respect of the eighteenth amendment. The opinion states that "The eighteenth amendment by its terms applies to the United States and 'all territory subject to the jurisdiction thereof.'" In the case at bar section 35 does not contain the language "all territory subject to the jurisdiction." Whether the opinion of the Acting Attorney General is correct or not, it is apparent that he was construing a statute enacted under a constitutional provision containing language not found in section 35 and, therefore, not the subject matter of construction in this case.

Demurrer sustained.

JULIUS M. MAYER,
District Judge.

FEBRUARY 15, 1921.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Feb. 16, 1921.

36 *Order sustaining demurrer of deft. Raymond H. Bowman, &c.*

At a stated term of the United States District Court held in and for the Southern District of New York at the United States courthouse and post-office building, Borough of Manhattan, City of New York, on the 25th day of March, 1921.

Present: Honorable Julius M. Mayer, United States district judge.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
RUPERT WRY, RAYMOND H. BOWMAN, H. B. HANKINSON, and M. R. MILLAR, defendants.

The indictment herein having been filed on the 5th day of October 1920, and the demurrer of the defendant Raymond H. Bowman, in which it was alleged that the court had no jurisdiction over any of the acts alleged in the said indictment having been filed on the 27th day of October, 1920, and the issues of law raised by the said demurrer having come on to be heard by this court at a stated term thereof, and after hearing George A. Hopkins, Esq., in support of the said demurrer and Francis G. Caffey, Esq., United States attorney, Ben A. Matthews and Henry E. Kelley, assistant United States attorneys, in opposition thereto, and due deliberation having been had thereon and the court on February 16, 1920, having handed down its written opinion, holding that the court was without authority to exercise jurisdiction over the acts alleged in the indictment: Now, therefore, it is

Ordered that the demurrer of the defendant Raymond H. Bowman to the indictment herein and to each and every count thereof be and the same is hereby sustained and it is

37 Further ordered that the defendant Raymond H. Bowman be, and he is hereby is, discharged from custody.

J. M. MAYER,
United States District Judge.

Service of copy acknowledged.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 25, 1921.

38 *Docket entries.*

UNITED STATES DISTRICT COURT,
Southern District of New York.

THE UNITED STATES
vs.
RUPERT WRY, RAYMOND H. BOWMAN, H. B. HANKINSON, M. R. Millar. } C 24-467.

For defendant: Geo. A. Hopkins (for Bowman) Woolworth Bldg. False & fraudulent claim against U. S. Vio. sec. 35, U. S. C. C.

1920.

Oct. 5. Filed indictment.
7. Deft. Bowman pleads not guilty. Bail, $1,000.
7. " Hankinson pleads not guilty. Bail, $500.
7. Filed recognizance Bowman—Albert Shestack, surety.
7. " " Hankinson—Nat. Surety Co., surety.
20. Deft. Hankinson pleads guilty.
20. " sentenced to one day in custody of U. S. marshal.
20. Issued commitment and duplicate.
20. Filed commitment and entered return. Defendant delivered to U. S. marshal.
27. Filed demurrer of Bowman.

Dec. 15. Recognizance of Wry ordered forfeited. Augustus N. Hand, J.

1921.

Jan. 4. Filed order that clerk pay $1,000 bail of Wry into U. S. Treasury.

Feb. 16. Filed opinion, Mayer, J. "Demurrer sustained" as to Bowman.

Mar. 25. Filed order sustaining demurrer as to Bowman.
30. " petition for writ of error & assignment of errors.
31. " citation and writ of error returnable U. S. Supreme Court April 28, 1921.

39 UNITED STATES DISTRICT COURT,
Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
RUPERT WRY, RAYMOND H. BOWMAN, H. B. HANKINS, and M. R. MILLAR, defendants.

Assignments of error.

The United States of America in connection with its petition for a writ of error make the following assignments of error which they allege occurred in the decision of the court in sustaining the demurrer of the defendant Raymond H. Bowman to the indictment herein, to wit:

1. The court erred in sustaining the demurrer to the indictment herein.

2. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the first count of the indictment.

3. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the second count of the indictment.

4. The court erred in holding as it did in sustaining the demurred to the indictment herein that the court was without jurisdiction over the subject matter of the third count of the indictment.

5. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the fourth count of the indictment.

40 6. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the fifth count of the indictment.

7. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the subject matter of the sixth count of the indictment.

8. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the first count of the indictment did not constitute a crime punishable under any law of the United States.

9. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the second count of the indictment did not constitute a crime punishable under any law of the United States.

10. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the third count of the indictment did not constitute a crime punishable under any law of the United States.

11. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the fourth

count of the indictment did not constitute a crime punishable under any law of the United States.

12. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the fifth count of the indictment did not constitute a crime punishable under any law of the United States.

41 13. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the acts alleged in the sixth count of the indictment did not constitute a crime punishable under any law of the United States.

14. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the first count of the indictment when committed on board a vessel of the United States on the high seas and without the jurisdiction of any particular State of the United States.

15. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the second count of the indictment when committed partly on board a vessel of the United States on the high seas and without the jurisdiction of any particular State of the United States and partly in a foreign country.

16. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the third count of the indictment when committed wholly within a foreign country.

17. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the fourth count of the indictment when committed on board a vessel of the United States while the same was without the jurisdiction of any particular State of the United States but in waters within the admiralty and maritime juris-

42 diction of the United States.

18. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the fifth count of the indictment when committed wholly within a foreign country.

19. The court erred in holding as it did in sustaining the demurrer to the indictment herein that the court was without jurisdiction over the offense alleged in the sixth count of the indictment when committed wholly within a foreign country.

The United States of America aforesaid, plaintiff in error, prays that the decision aforesaid and the order entered thereon for the errors aforesaid in the record and proceeding herein may be reversed and altogether held for nothing and that the plaintiff in error may be restored to all things which it has lost by reason of said decision and order and judgment and that the District Court of the United States be directed to vacate and set aside said order and judgment

and to compel the defendant in error to plead to the indictment herein and for such other and further relief as to the court may seem proper.

Dated New York, March 30, 1921.

FRANCIS G. CAFFEY,
United States Attorney, Southern District of New York.

Service of copy acknowledged.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 30, 1921.

43 UNITED STATES DISTRICT COURT,
Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
against
RUPERT WRY, RAYMOND H. BOWMAN, H. B. Hankinson, & M. R. Millar. } Petition for writ of error.

Now comes United States of America by its attorney, Francis G. Caffey, United States attorney for the Southern District of New York, and complains that in the record and proceeding had in this cause, sustaining the demurrer of the defendant Raymond H. Bowman to the indictment herein, a manifest error hath happened, as well appears from the assignments of error herewith submitted. The United States of America prays for the allowance of a writ of error and for such other orders and process and may cause the same to be correct by the Supreme Court of the United States.

Dated New York, N. Y., March 30th, 1921.

FRANCIS G. CAFFEY,
United States Attorney for the Southern District of New York, Attorney for Petitioner.

Receipt of copy acknowledged.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 30, 1921.

44 *By the honorable Julius M. Mayer, one of the judges of the District Court of the United States for the Southern District of New York, to Raymond H. Bowman, defendant in error, greeting:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol, in the city of Washington, in the District of Columbia, on the 28th day of April, 1921, pursuant to a writ of error filed in the office of the clerk of the District Court of the United States for the Southern District of New York, wherein the United States of America is plaintiff in error and you are the defendant in error, to show cause, if any there be, why judgment in said writ mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, at the borough of Manhattan, in the city of New York, Southern District of New York, this 30th day of

March, in the year of our Lord one thousand nine hundred and twenty-one, and of the independence of the United States the one hundred and forty-fifth.

J. M. MAYER,
Judge of the District Court of the United States
for the Southern District of New York.

45 (Endorsed:) Court docket No. C–24–467. Form No. 336. U. S. District Court, Southern District of New York. The United States of America versus Rupert Wry, Raymond H. Bowman, H. B. Hankinson & M. R. Millar. Citation. Francis G. Caffey, United States attorney. Due service of a copy of the within is hereby admitted. April 1st, 1921. Copy recd. April 2/21. George A. Hopkins, aty. for deft. Bowman. Filed Mar. 31, 1921. U. S. District Court, S. D. of N. Y.

(Endorsement on cover:) File No. 28241. S. New York, D. C. U. S. Term No. 884. The United States of America, plaintiff in error, vs. Raymond H. Bowman. Filed April 19th, 1921. File No. 28,241.

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In the Supreme Court of the United States

OCTOBER TERM, 1922.

UNITED STATES OF AMERICA, PLAINTIFF in error,
v.
RAYMOND H. BOWMAN. } No. 69.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The United States, by this writ of error, seeks to review a judgment of the District Court for the Southern District of New York sustaining a demurrer to an indictment found in that court.

The specific question to be reviewed is whether the District Court had jurisdiction of the offenses denounced by section 35 of the United States Criminal Code, if committed by citizens of this country on board an American vessel upon the high seas.

The defendant in error, together with three other persons, Wry, Hankinson, and Millar, were on October 5, 1920, indicted for conspiracy to defraud the United States Shipping Board Emergency Fleet Corporation, a corporation in which the United States was a stockholder, under section 35 of the Criminal Code.

The defendant Hankinson pleaded guilty (p. 22). The defendant Wry forfeited his bail (p. 22). The defendant Millar was never arrested, and the defendant in error, Bowman, demurred to the indictment. The demurrer was sustained.

The purpose of the conspiracy was to cause the Emergency Fleet Corporation to pay for 1,000 tons of fuel oil for account of the steamship *Dio*, a vessel belonging to that corporation, while but 600 tons of the oil were to be delivered to the vessel, the difference between the price paid for the 1,000 tons and the 600 tons actually delivered, to be divided between the conspirators; that is, the Fleet Corporation was to pay for 400 tons of oil which it had never received and the defendants were to receive the amount paid therefor.

FACTS.

The facts in more detail as they are alleged in the indictment show that the National Shipping Corporation was operating and managing on behalf of the Fleet Corporation the vessel *Dio*, owned by the Fleet Corporation, under a contract whereby the expenses for oil, labor, and material for repairs and replacements for the vessel were to be paid by the Fleet Corporation. E. Johnston & Company (Ltd.) were the agents for the National Shipping Corporation at Rio de Janeiro, Brazil. The Standard Oil Company of Brazil was a dealer in oil at Rio de Janeiro. Wry was a citizen of the United States and master of the vessel. Bowman was a citizen of the United States and chief engineer of the vessel. Hankinson was a

citizen of the United States and a representative of the Standard Oil Company of Brazil at Rio de Janeiro, and Millar was a British subject and a merchant, ship repairer, and engineer of the city of Rio de Janeiro (p. 2).

The conspiracy began on board the *Dio* upon the high seas, "out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, but within the admiralty and maritime jurisdiction of the United States." As part of the conspiracy, Wry and Bowman were by wireless telegraph to notify Johnston and Company that they would require at Rio de Janeiro, for use of the vessel, 1,000 tons of fuel oil; that an order for account of the Fleet Corporation for 1,000 tons of oil should be given to the Standard Oil Company of Brazil; that the defendant Hankinson should accept said order on behalf of the Standard Oil Company and should charge the vessel therefor, but should deliver on account of the order only 600 tons of oil; that an invoice in the name of the Standard Oil Company for 1,000 tons of oil, and a receipt signed by Wry and Bowman, the master and engineer of the vessel, therefor, should be presented to Johnston and Company; that Wry and Bowman should approve payment of the invoice and thereby procure Johnston and Company, for account of the Fleet Corporation, to pay the amount of the invoice in the form of a check on a local bank at Rio de Janeiro, made payable to bearer; that the defendant Millar should cause the check to be cashed; that the defendants

should cause to be paid to the Standard Oil Company an amount equal to the price of 600 tons and should divide among themselves the remaining proceeds of the check; and that false reports to the agents of the National Shipping Corporation should be made by Wry and Bowman showing the receipt of 1,000 tons of oil, and thus the fraud should be concealed and covered up (p. 3). Overt acts showing the successful outcome of the conspiracy are also set forth.

THE INDICTMENT.

The indictment is in six counts. The substance of the offense charged in the first, second, and third counts is a conspiracy to defraud the Fleet Corporation. The fourth count describes the offense as making and causing to be made for payment a false, fictitious, and fraudulent claim against the Fleet Corporation. The fifth count charges the presentation of the same claim. The sixth charges the concealment by trick, scheme, and device of a material fact in the presentation of the claim.

The *locus* of the acts relied upon as constituting the crime is variously described in the several counts. In the first count it is alleged that the conspiracy occurred on the high seas on board the *Dio;* the second alleges the same conspiracy upon the high seas and elsewhere out of the jurisdiction of any particular State or of any district of the United States but within the admiralty and maritime jurisdiction of the United States, to wit: On board the *Dio* on the high seas and at the port of Rio de Janeiro, as

well as in that city. The third alleges that the offense took place at Rio de Janeiro; the fourth alleges that the offense occurred on board the *Dio* at the port of Rio de Janeiro; and the fifth alleges that the presentation of the false claim was at the city of Rio de Janeiro; the sixth alleges that the misconduct was at the port and city of Rio de Janeiro. Inasmuch as it is not claimed that the indictment is defective in any of its substantive allegations, it is unnecessary to discuss it in detail.

THE DEMURRER.

Bowman demurred to each count of the indictment on the ground that it appears on the face thereof that the court has no jurisdiction of the subject matter of the action (p. 15):

> First. That it is not alleged, nor does it appear in the said indictment nor in any count thereof, that any act or crime alleged in said indictment nor in any count thereof was committed within the jurisdiction of the United States nor within the jurisdiction of any particular State thereof.
>
> Second. That it does appear by the said indictment and by each and every count thereof that the acts and crimes alleged in said indictment and in each and every count thereof were committed without the jurisdiction of the United States and every State thereof; that is to say, that the said acts and alleged crimes set forth in the said indictment and each and every count thereof were committed within the jurisdiction of the Republic of Brazil.

THE DECISION OF THE COURT BELOW.

Judge Mayer gave the case very careful consideration and, in sustaining the demurrer, reached his conclusion with evident reluctance.

He held that so far as the substantive matter in the indictment was concerned, each count set forth a complete offense under section 35 of the Criminal Code (p. 19); that if any Federal court has jurisdiction, the Southern District of New York was the correct forum (p. 19); that Congress has power to enact legislation such as that embodied in section 35 of the Criminal Code, applicable upon the high seas (p. 20). He points out that one of the accepted functions of the sovereign is to regulate the ships under its flag on the high seas and the conduct of its citizens while on those ships, and that such authority has been exercised and repeatedly sustained by the courts (citing authorities), and that the power may be based on any one of several express provisions of the Constitution, including the power to regulate foreign commerce, the power to define felonies on the high seas, and the power to make effective the other powers of government, by providing laws for the protection of the Government, its agencies, or property.

He says (p. 20):

> Ordinarily, however, and *prima facie*, the criminal laws of the United States are effective only within the territory of the United States. For that purpose, however, the high seas

> outside a marine league from the shores and outside the jurisdiction of any particular State, are constructively a part of such territory. Indeed, the high seas are a part peculiarly within the jurisdiction of the United States, in the application of its criminal laws, as distinguished from the States and their laws. (Citing authorities.)

He concludes, however, that when Congress has intended that its laws shall be operative on the high seas it has so stated; that chapters 11 and 12 of the Criminal Code refer to the high seas, while chapter 4, in which is included section 35, does not, and from this the learned Judge draws the inference that jurisdiction of the crimes alleged has not been conferred upon the court, and that in the absence of language extending the *locus* of the crime to the high seas or beyond the territory of the United States, "the court and not Congress would be writing the statute, if it gave to it the construction urged by the Government."

THE CONTENTION OF THE GOVERNMENT.

It is with this conclusion of the court below that the Government takes issue, and we contend:

> First. The criminal jurisdiction of the United States may extend to offenses against its laws committed by American citizens upon the high seas.
>
> Second. Section 35 of the Criminal Code is broad enough in its language to cover and it was intended to cover the offenses enumerated when committed anywhere within the criminal jurisdiction of the United States.

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Third. The legislation of Congress with respect to this class of crimes does not warrant the inference that it intended to limit the application of the statute under consideration to any particular locality within the criminal jurisdiction of the United States.

Fourth. The jurisdiction of the court below is complete and adequate to try the defendant upon the indictment.

THE STATUTES INVOLVED.

CRIMINAL CODE.

CHAPTER 4. OFFENSES AGAINST THE OPERATION OF THE GOVERNMENT.

* * * * *

SEC. 35. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, *or any corporation in which the United States of America is a stockholder*, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, *or any*

corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, *or any corporation in which the United States of America is a stockholder;* or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, *or any corporation in which the United States of America is a stockholder*, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, *or any corporation in which the United States of America is a stockholder*, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any

amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, *or any corporation in which the United States of America is a stockholder*, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than $500 or imprisoned not more than two years, or both. (Italics ours.)

JUDICIAL CODE.

CHAPTER 2. DISTRICT COURTS—JURISDICTION.

SEC. 24. The District Courts shall have original jurisdiction as follows:

* * * * *

Second. Of all crimes and offenses cognizable under the authority of the United States.

CHAPTER 4. MISCELLANEOUS PROVISIONS.

* * * * *

SEC. 41. The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought.

ARGUMENT.

I.

The criminal jurisdiction of the United States may extend to offenses against its laws committed by American citizens upon American ships on the high seas.

This general principle was recognized by the court below and is too well established to require argument. It may be well, however, to recall the familiar words of Mr. Justice Field in *United States* v. *Smiley*, 6 Sawyer, 640 Fed. Case. No. 16317, who stated the principle as follows:

> The criminal jurisdiction of the Government of the United States—that is, its jurisdiction

to try parties for offenses committed against its laws—may in some instances extend to its citizens everywhere. Thus, it may punish for violation of treaty stipulations by its citizens abroad, for offenses committed in foreign countries where, by treaty, jurisdiction is conceded for that purpose, as in some cases in China and in the Barbary States; it may provide for offenses committed on deserted islands, and on an uninhabited coast by the officers and seamen of vessels sailing under its flag. It may also punish derelictions of duty by its ministers and consuls, and other representatives abroad. But in all such cases it will be found that the law of Congress indicates clearly the exterritorial character of the act of which punishment is aimed. Except in cases like these, the criminal jurisdiction of the United States is necessarily limited to their own territory, actual or constructive. Their actual territory is coextensive with their possessions, including a marine league from their shores into the sea. * * * *The constructive territory of the United States embraces vessels sailing under their flag; wherever they go they carry the laws of their country, and for a violation of them their officers and men may be subjected to punishment.* (Italics ours.)

II.

Section 35 of the Criminal Code is broad enough in its language to cover and it was intended to cover the offenses enumerated when committed anywhere within the criminal jurisdiction of the United States.

This section has been set forth at length (*ante* p. 8). The person who is guilty is "whoever" shall do any of the acts mentioned. The offense is defrauding the Government, and the propensity to commit it is, unhappily, general and not local. No place is mentioned where the commission of the acts becomes criminal, and no place is indicated where they may be committed and not be criminal. The intent is to protect the Public Treasury from plunder, not to punish wrongs against persons or property in any particular place, or disturbances of the peace or security of any particular community. The Public Treasury is located at the seat of government, and this statute by its terms would seem to condemn "whoever," regarding it with covetous eye, stretches forth a grasping hand, no matter how far away he may be, provided he is within the criminal jurisdiction of the United States. If the decision of the court below is right, the power to punish under this act stops at the shore, not because the United States is without power but because Congress, by the language of this act, has failed to exercise the power. Is it conceivable that Congress intended that the Treasury could be defrauded by its own citizens if they perpetrated the fraud on the high seas?

The section under consideration is contained in chapter four of the Criminal Code entitled "Offenses against the operations of the Government." These offenses are many in number and include forging bonds and letters patent, pretending to be a United States officer, bribery of United States officers, enticing desertion from the Army or Navy, embezzling or stealing money or property of the United States, forging customs entry certificates, destroying or concealing invoices, securing false entry of goods, forging or altering ships or customhouse papers, forging certificates of citizenship. In each instance the guilty one is "whoever" does the criminal act. If the decision of the court below is correct, then all these offenses against the operations of the Government are not crimes when committed by American citizens upon American ships. If so, a fatal vacuum exists in our criminal jurisprudence and the law, like nature, abhors such a vacuum.

The language of the act is surely broad enough considered by itself, but the court says that when Congress "has intended that its laws shall be operative on the high seas, it has so stated" (p. 20). The conclusion is not drawn from any language contained in the act, therefore, but from omissions which the court deems significant because of language used in other acts.

III.

The legislation of Congress with respect to this class of crimes does not warrant the inference that it intended to limit the application of the statute under consideration to any particular locality within the criminal jurisdiction of the United States.

When the history of the criminal legislation of the United States is examined carefully, no such significance appears. In legislating with respect to crimes, Congress has recognized these divisions into which criminal acts may be divided:

First. Crimes which may be called ordinary crimes; that is, crimes against individuals or their property and well known to the common law, or such as were universally recognized as crimes by all civilized nations, and the punishment of which was peculiarly within the jurisdiction of local sovereignties. Murder, burglary, larceny, robbery, and arson are familiar examples.

Second. Crimes which are by their nature offenses not against individuals or their property but against the sovereignty of the United States as distinct from that of a State, and of which the States have no jurisdiction. Counterfeiting, bribery of United States officers, offenses against the revenue laws, against the national banking law, and against public justice are illustrations of this class.

Third. Crimes which may be called crimes of the sea; for instance, piracy and the scuttling of a vessel. With respect to the first class of crimes it has been

the policy of the United States, irrespective of any question of jurisdiction, to leave their punishment to the States.

In *Caha* v. *United States*, 152 U. S. 211, Mr. Justice Brewer, writing for the court, said (p. 215):

> Generally speaking, within any State of this Union the preservation of the peace and protection of person and property are the functions of the State government, and are no part of the primary duty, at least, of the Nation. The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia and other places that are within the exclusive jurisdiction of the National Government.

With respect to crimes of this character Congress has enacted legislation making them punishable when committed within the jurisdiction of the United States but without the jurisdiction of any State. This has been done in order that offenders might not escape merely because there was no power to punish them. So criminal acts of this character have been made punishable by the United States when committed within forts, military reservations, and other places within the territorial limits of a State but without the jurisdiction of the State and upon the high seas.

With respect to the third class of crimes—that is, sea crimes—only the United States has jurisdiction and it has enacted legislation for their punishment.

With respect to the second class of crimes, however, the great mass of statutory offenses not against persons and property *but against the sovereignty of the United States and the operations of its Government*, and which do not depend for their criminal character upon the locality in which they are committed, Congress has not adopted any policy of distinguishing between crimes on land and crimes at sea. The offenses condemned by section 35 of the Criminal Code are of this character.

From the beginning of the Government, however, Congress has recognized the fact that the criminal jurisdiction of the United States extends not only throughout its territorial limits but also to the high seas. In the judiciary act of September 24, 1789 (1 Stat. 73), Congress established the district and circuit courts and gave them jurisdiction of all crimes and offenses "cognizable under the authority of the United States, committed within their respective districts, or upon the high seas." At the time this act was passed Congress had not made any acts crimes against the United States.

At the second session of the First Congress on April 30, 1790 (1 Stat. 112), it passed an act entitled "An act for the punishment of certain crimes against the United States" and in this act the distinction between the classes of crimes hereinbefore mentioned was clearly drawn. This act provided for the punishment of treason and various crimes, most of which were common-law crimes. It provided for the punishment of murder and manslaughter "within any fort, arsenal, dock yard, magazine, or in any other

place or district of country, under the sole and exclusive jurisdiction of the United States"; murder or robbery, "or any other offense which if committed within the body of a county, would by the laws of the United States be punishable with death" when committed upon "the high seas, or in any river, haven, basin or bay, out of the jurisdiction of any particular State." The act then proceeded to define and provide for the punishment of piracy upon the high seas. It defined and provided for the punishment of mayhem within any of the places upon the land under the exclusive jurisdiction of the United States or upon the high seas on any vessel belonging to the United States or to any citizen thereof. These provisions of the statute, with the exception of those relating to treason, enumerate offenses against persons and property which by the common law of that day would be crimes if committed within the jurisdiction of a State, or they were essentially crimes of the sea.

The act then provides punishment for crimes of the second class mentioned above which by their nature were crimes against the United States and the operations of its government, and of which the United States had jurisdiction without reference to the place where they were committed. They are, forging or counterfeiting any public security of the United States; stealing or falsifying any record, writ, process, or other proceedings in any of the courts of the United States, etc. In describing these offenses no words are used limiting them to any locality. The

language is "if any person or persons." Section 16 relates to the crime of larceny and its application is limited to places under the sole and exclusive jurisdiction of the United States or upon the high seas, another common law crime, it is to be noticed, which in all other places would be punishable by the local authority. This same section also provides for the punishment of the offense of stealing arms, munitions, habiliments of war, etc., belonging to the United States. The next section, 17, punishes the offense of receiving stolen goods by any person "within any part of the jurisdiction of the United States, as aforesaid." The next section, 18, provides for the punishment of perjury in any suit depending in any of the courts of the United States, or in any deposition taken pursuant to the laws of the United States. Section 21 provides for the punishment of bribery of a judge of the United States. Section 22 makes it a crime to obstruct an officer of the United States in serving any process of a United States court. Without going into the matter at too great length, we think that we are warranted in saying that there is nothing in this first criminal statute of the United States to show that Congress, when it used general words without limitation, intended to restrict the crimes therein mentioned to any particular place or places. Where the crime was one against the operations of the Government, no words of limitation were used. Wherever the high seas were mentioned, it was because the crime, from its nature, was one which could only be committed at sea, or else it was one

which was by its nature a crime punishable by the laws of the States if committed on land, but, by reason of the fact that it was committed at sea, was beyond their jurisdiction.

This same distinction has been carried through the various revisions and compilations of the statutes which have been made since. While an exhaustive examination of them all might and probably would show certain exceptions or seeming exceptions, we feel certain that there is no warrant for the inference that Congress in any general way has ever adopted the policy, in respect to crimes which were by their nature crimes against the sovereignty of the United States and the operations of its Government, and which did not depend upon their locality for their criminal character, of drawing a distinction between those which were punishable if committed on land and those which were punishable if committed at sea.

The same general classification of crimes was carried into the Revised Statutes and continued in the Criminal Code. The Criminal Code was enacted by the act of March 4, 1909, 35 Stat. 1088. It consists of fifteen chapters. The first ten relate to offenses against the existence of the Government, against neutrality, against the elective franchise and civil rights, against the operations of the Government (chap. 4, which includes section 35) relating to official duties, against public justice, against the currency, against the Postal Service, against foreign and interstate commerce, and peonage and the

slave trade. Chapter 12 is entitled "Piracy and other offenses upon the seas." These offenses, essentially sea crimes, are piracy, maltreatment of crew by officers of a vessel, inciting mutiny on shipboard, revolt or mutiny on board ship, a seaman laying violent hands upon his commander, abandonment of a mariner in foreign port, conspiracy to cast away a vessel, plundering a vessel in distress, attacking a vessel with intent to plunder, breaking and entering a vessel, destroying vessel at sea, destroying or attempting to destroy a vessel, robbery on shore by piratical crew, arming vessel to cruise against citizens, piracy under color of foreign commission, piracy by aliens, running away with vessel or cargo, confederating with pirates, selling arms, intoxicants, etc., in the Pacific Islands.

Chapter 11 is entitled "Offenses within the admiralty and maritime and territorial jurisdiction of the United States." The first section of this chapter defines the places and waters to which it is applicable, sec. 272. These places are:

(1) The high seas or any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, or, within like limitations, on board any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created under the laws of the United States or any State, district, or Territory.

(2) When committed upon any vessel registered under the laws of the United States and on a voyage

upon the waters of any of the Great Lakes or any of the waters connecting said lakes or upon the river St. Lawrence, where it is the international boundary line.

(3) When committed on any lands acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or acquired by the United States by consent of the legislature of the State for the erection of a fort, etc.

(4) On any island appertaining to the United States containing deposits of guano.

The offenses set forth in this chapter are, without exception, offenses of a common-law nature, crimes against persons and property, and such as are universally punishable by the laws of the different States, like murder, manslaughter, felonious assault, robbery, arson, and other crimes of violence, larceny, and receiving stolen goods. The last section of the chapter, section 289, provides that whoever within the territorial limits of any State, organized territory, or district, but within any of the places described in section 272, shall do anything not made penal by any law of Congress but which, if committed within the jurisdiction of the State, Territory, or District in which such place is situated, would by its laws be penal shall be deemed guilty of a like offense.

The intention of this chapter was to provide a criminal code for those places *under the exclusive jurisdiction of the United States*, so that they should not be freed from the restraints of law. *Western Union Tel. Co.* v. *Chiles*, 214 U. S. 274, 278, 279.

An examination of chapters 11 and 12 of the Criminal Code, therefore, shows that the reasoning adopted by the court below was unsound. It *does* show that when "Congress has intended that its laws shall be operative on the high seas it has so stated," in *two classes of cases* only. (1) Crimes which are by their nature committed only upon the seas and (2) offenses universally recognized as atrocious crimes, punishable by the laws of every State, and which if not specifically made crimes by act of Congress would go unpunished.

But what of the great body of statutory crimes created by Congress in which the element of locality plays no part and over which no State has jurisdiction; offenses against the existence of the Government itself, against the elective franchise, against the operations of government, against public justice, against the coinage, the Postal Service, and all the other crimes set forth in the first ten chapters of the Criminal Code? Can it be inferred that the things made penal by them can with impunity be committed on the high seas, merely because in chapter 11 Congress has specifically provided for the punishment of offenses within the admiralty and maritime and territorial jurisdiction, and in chapter 12 for piracy and other offenses upon the seas? Defrauding the Government is not an admiralty, maritime, or territorial offense. Are the high seas safe for those who would counterfeit the coin or forge the securities of the United States, bribe its officials, and conspire to plunder its Treasury, merely because Congress has by

appropriate language provided for the punishment of piracy, and murder in a fort or on the guano islands? The crime of treason is defined as follows in section 1:

> Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.

But sections 3 and 4, defining misprison of treason and inciting rebellion or insurrection, do not contain the words "within the United States or elsewhere." They use merely the word "whoever."

Are American ships on the high seas, therefore, sanctuaries for those who would incite insurrection or rebellion?

Finally, Congress has in so many words forbidden any such presumption as that drawn by the court below. Section 339 of the Criminal Code provides:

> The arrangement and classification of the several sections of this title have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapters under which any particular section is placed.

The history of section 35 is suggestive. It is based upon section 5438, Revised Statutes, which in turn was derived from the act of March 2, 1863, ch. 67, 12 Stat. 696. This act was entitled "An act to prevent

and punish frauds upon the Government of the United States." The first section made criminal fraudulent acts against the Government committed by "any person in the land or naval forces of the United States or in the militia in actual service of the United States, in time of war," to be punished by court-martial. Section 3 provided that any person *not* in the military or naval forces nor in the militia who should commit any of the acts prohibited should forfeit the sum of two thousands dollars and, in addition, double the amount of damages sustained by the United States, to be recovered by suit, and should be subject also on conviction "in any court of competent jurisdiction." to fine or imprisonment. Section 4 provided that the District Courts of the United States, the Circuit Court of the District of Columbia, and the District Courts of the Territories within whose jurisdictional limits the offender should be found, "wheresoever such act may have been done or committed" should have jurisdiction to "hear, try, and determine such suit." A fair reading of this section indicates, perhaps, that it had reference only to the civil suits, but it shows clearly that the condemnation of the fraudulent acts was universal, not limited as to locality. Through the subsequent amendments and compilations, the statute has been condensed, but there is nothing to indicate that it has been limited in its application or that the word "whoever" means less than what was comprehended by the words "any person *in* the land or naval forces of the United States, or *in* the militia in actual service of

the United States, in time of war, and 'any person' *not* in such forces or service, 'wheresoever such act may have been done or committed.'"

The particular offense charged against the defendant arose under the amendment to section 35 made by the act of 1918, which extended the application of the act to frauds against a corporation in which the United States was a stockholder. This act was passed in the midst of the war, undoubtedly with special reference to the Emergency Fleet Corporation. The amending act, according to the report of the House Committee on the Judiciary, was for the protection, among other things, of the ammunition and stores of the Army and Navy in all its branches and divisions. At that time the operations of the Fleet Corporation and of the Army and Navy were, in large part, conducted upon the seas, and we can not believe that Congress intended to make frauds upon the Fleet Corporation or the receiving of arms, ammunition, equipment, and military stores stolen from the United States, crimes only if committed upon land and not crimes if committed on ships upon the seas.

The committee said in reporting the bill with amendments (H. R. No. 668, 65th Cong., 2nd sess.) that the object was—

> to fully reenact and reenforce the provision of section 35 of the Criminal Code so that it will include * * * an offense against any corporation in which the United States of America is a stockholder * * * and includes the

> protection of the uniform and all arms, ammunition, and stores of the Army and Navy of the United States in all its branches and divisions.

The perils of 1863, when the Nation was at war, again threatened. Why should it be thought that Congress had in mind only frauds conceived on land and not those "wheresoever" committed?

In the case of *Caha* v. *United States*, 152 U. S. 211, the plaintiff in error had been convicted of the crime of perjury in the District Court of the United States for the District of Kansas for false testimony given in a contest over a homestead entry in the land office. The crime was committed on January 3, 1890, before the passage of the act creating the Territory of Oklahoma, in the land office at Kingfisher, Oklahoma. The indictment was demurred to upon the grounds (1) that the court had no jurisdiction over the offense and (2) that the indictment stated no public offense. It was not disputed that at the time of the commission of the offense the district court of Kansas had general jurisdiction over offenses against criminal laws of the United States at the place where the perjury was committed. The defendant was indicted under section 5392 of the Revised Statutes, which provided as follows:

> Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration,

> deposition, or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury.

Apparently, although it is not wholly clear from the report of the case, the defendant claimed that that section was not applicable because of the provision of section 2145, which provided as follows:

> Except as to crimes the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

The latter section was included in Title XXVIII entitled "Indians," while section 5392 was included in Title LXX entitled "Crimes, chapter 4, entitled 'Crimes against justice.'" The argument seems to have been something like that advanced in the case at bar; that section 5392, a general statute against the crime of perjury, did not apply to perjury committed in the Indian Territory, because by section 2145 Congress had made applicable to the Indian country *only the general laws of the United States relating to the punishment of crimes committed in places within the sole and exclusive jurisdiction of the United States* (except as to the crimes, the punishment of which was expressly provided for in Title XXVIII, relating to Indians). In overruling this condition Mr. Justice

Brewer, writing for the court, said of section 5392 (p. 215):

> This statute is one of universal application within the territorial limits of the United States, and is not limited to those portions which are within the exclusive jurisdiction of the National Government, such as the District of Columbia. Generally speaking, within any State of this Union the preservation of the peace and the protection of person and property are the functions of the State government, and are no part of the primary duty, at least, of the Nation. The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the National Government. It was in reference to such body of laws that section 2145, Revised Statutes, was enacted, and the argument which is sought to be drawn by the counsel therefrom against the jurisdiction of the district court of Kansas has no foundation. It is enough that section 5392 has uniform application throughout the territorial limits of the United States; that by section 563 the District Courts are given jurisdiction generally "of all crimes and offenses cognizable under the authority of the United States committed within their respective districts;" and that by 22 Stat. at L. 400, chap. 13, §2, the territory in question was annexed to and made a part of the United States judicial district of Kansas.

In saying that section 5392 had "uniform application throughout the territorial limits of the United States," it is apparent that the court did not have in mind any distinction between the land and the sea. The fair inference is that the words were used in the sense of universal and general as distinguished from local and special. The fact that Congress had made certain laws specifically applicable to the territory in question, did not mean that the body of general and universal law did not apply. "Territorial limits," it is fair to assume, was intended to have the same meaning as the words "territory, actual or constructive," used by Mr. Justice Field in *U. S.* v. *Smiley, supra.*

This case is not one for the application of the well-known rule that criminal statutes are to be construed strictly.

The reason for the rule of strict construction of penal statutes is that no man should be called on to answer for a crime unless the acts made criminal are distinctly set forth in the statute. The citizen should be able, from reading the statute, to regulate his conduct, and to determine whether any contemplated course of conduct is or is not a violation thereof. There is some excuse for extending the benefit of a doubt to one who has done things not strictly within the meaning of a statute defining a criminal act. *There is no reason for extending the benefit of the doubt to one who has committed clearly and distinctly the prohibited act but may on the theory of the court below have chosen a safe place to do it.* In

the former case the rule protects the innocent; in the latter, it merely protects the guilty. But here we have no claim that the statute is uncertain or ambiguous. It is not a question of statutory construction. "Where there is no ambiguity, in the words there is no room for construction." (*U. S.* v. *Wiltberger*, 5 Wheat. 76, quoted in *U. S.* v. *Harris*, 177 U. S. 310.) The question rather is whether there is anything in the settled policy of Congress, as shown by a consideration of its acts, which justifies the court in holding that Congress has intended to limit the application of the act in a manner not indicated by the language used. That question, we contend, and we believe correctly, should be answered in the negative.

In *United States* v. *Lacher*, 134 U. S. 624, 629, Chief Justice Fuller, in delivering the opinion of the court, said, quoting from Sedgwick on statutory and constitutional law.

> "The rule that statutes of this class are to be construed strictly is far from being a rigid or unbending one; or rather, it has in modern times been so modified and explained away as to mean little more than that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment; the courts refusing, on the one hand, to extend the punishment to cases which are not clearly embraced in them, and, on the other, equally refusing, by any mere verbal nicety, forced construction or equitable interpretation, to exonerate parties plainly within their scope."

This passage is quoted by *Baron* Bramwell, in *Atty. Gen.* v. *Sillem*, 2 Hurl. & C. 532, as one "in which good sense, force, and propriety of language are equally conspicuous; and which is amply borne out by the authorities, English and American, which he cites."

IV.

The jurisdiction of the court below is complete and adequate to try the defendant upon the indictment.

Sections 24 and 41 of the Judicial Code set forth at page 11, *supra*, confer complete jurisdiction upon the district court in which the indictment was found.

CONCLUSION.

The offense for which the defendant was indicted therefore, being clearly within the criminal jurisdiction of the United States; the crime itself being one against the operations of its government, in no way deriving its criminal character from the locality where it was committed, but equally harmful wherever done; the language of the act being comprehensive and clear and without implied limitation; and the courts of the United States being clothed with adequate jurisdiction, the defendant should be tried for the crime.

The court below draws an inference from the fact that while the substance of section 35 has been upon the statute books for many years, it does not appear that there has heretofore been any case in which that section has been invoked to punish the offenses

denounced when committed on the high seas. So far as we can find, this is true, but always there must be a first offense under any statute, and we would like to believe that heretofore the men who go down to the sea in ships have not been moved, while yet upon the great waters, to defraud their country under whose flag they sailed.

It is therefore respectfully submitted that the judgment of the court below should be reversed.

JAMES M. BECK,
Solicitor General.

ALFRED A. WHEAT,
Special Assistant to the Attorney General.

SEPTEMBER, 1922.

○

UNITED STATES v. BOWMAN.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 69. Argued October 17, 1922.—Decided November 13, 1922.

1. A criminal statute dealing with acts that are directly injurious to the Government and are capable of perpetration without regard to particular locality, and subjecting all who commit them to punishment, is to be construed as applicable to citizens of the United States upon the high seas or in a foreign country, though there be no express declaration to that effect. P. 97.
2. Section 35 of the Criminal Code, as amended October 23, 1918, c. 194, 40 Stat. 1015, is applicable to citizens of the United States who, on the high seas, or in a foreign country, conspired to defraud the United States Shipping Board Emergency Fleet Corporation, of which the United States was the stockholder, by obtaining and aiding to obtain the allowance and payment of a false and fraudulent claim against the Corporation, and who, in a foreign country, made and caused such claim to be made. P. 100.
3. Penal statutes should be fairly construed, according to the legislative intent. P. 102.
4. Citizens of the United States while in a foreign country are subject to penal laws passed by the United States to protect itself and its property, and for infractions abroad are triable, under Jud. Code, § 41, in the district where they are first brought. P. 102.

287 Fed. 588, reversed.

Error to a judgment of the District Court quashing an indictment on demurrer.

Mr. Solicitor General Beck with whom *Mr. Alfred A. Wheat*, Special Assistant to the Attorney General, was on the brief, for the United States.

No appearance for defendant in error.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This is a writ of error under the Criminal Appeals Act (c. 2564, 34 Stat. 1246) to review the ruling of the District Court sustaining a demurrer of one of the defendants to an indictment for a conspiracy to defraud a corporation in which the United States was and is a stockholder, under § 35 of the Criminal Code, as amended October 23, 1918, c. 194, 40 Stat. 1015.

During the period covered by the indictment, i. e., between October, 1919, and January, 1920, the steamship Dio belonged to the United States. The United States owned all the stock in the United States Shipping Board Emergency Fleet Corporation. The National Shipping Corporation agreed to operate and manage the Dio for the Fleet Corporation, which under the contract was to pay for fuel, oil, labor and material used in the operation. The Dio was on a voyage to Rio de Janeiro under this management. Wry was her master, Bowman was her engineer, Hawkinson was the agent of the Standard Oil Company at Rio de Janeiro, and Millar was a merchant and ship repairer and engineer in Rio. Of these four, who were the defendants in the indictment, the first three were American citizens, and Millar was a British subject. Johnston & Company were the agents of the National Shipping Corporation at Rio. The indictment charged that the plot was hatched by Wry and Bowman on board the Dio before she reached Rio. Their plan was to order, through Johnston & Company, and receipt for, 1000 tons of fuel oil from the Standard Oil Company, but to take only 600 tons aboard, and to collect cash for a delivery of 1000 tons through Johnston & Company, from the Fleet Corporation, and then divide the money paid for the undelivered 400 tons among the four defendants. This

plan was to be, and was, made possible through the guilty connivance of the Standard Oil agent Hawkinson and Millar the Rio merchant who was to, and did collect the money. Overt acts charged included a wireless telegram to the agents, Johnston & Company, from the Dio while on the high seas ordering the 1000 tons of oil. The Southern District of New York was the district into which the American defendants were first brought and were found, but Millar, the British defendant, has not been found.

The first count charged a conspiracy by the defendants to defraud the Fleet Corporation in which the United States was a stockholder, by obtaining and aiding to obtain the payment and allowance of a false and fraudulent claim against the Fleet Corporation. It laid the offense on the high seas, out of the jurisdiction of any particular State and out of the jurisdiction of any district of the United States, but within the admiralty and maritime jurisdiction of the United States. The second count laid the conspiracy on the Dio on the high seas and at the port of Rio de Janeiro as well as in the city. The third count laid it in the city of Rio de Janeiro. The fourth count was for making and causing to be made in the name of the Standard Oil Company, for payment and approval, a false and fraudulent claim against the Fleet Corporation in the form of an invoice for 1000 tons of fuel oil, of which 400 tons were not delivered. This count laid the same crime on board the Dio in the harbor of Rio de Janeiro. The fifth count laid it in the city and the sixth at the port and in the city.

No objection was made to the indictment or any count of it for lack of precision or fullness in describing all the elements of the crimes denounced in § 35 of the Criminal Code as amended. The sole objection was that the crime was committed without the jurisdiction of the United States or of any State thereof and on the high seas or

within the jurisdiction of Brazil. The District Court considered only the first count, which charged the conspiracy to have been committed on the Dio on the high seas, and having held that bad for lack of jurisdiction, *a fortiori* it sustained the demurrer as to the others.

The court in its opinion conceded that under many authorities the United States as a sovereign may regulate the ships under its flag and the conduct of its citizens while on those ships, and cited to this point *Crapo* v. *Kelly*, 16 Wall. 610, 623–632; *United States* v. *Rodgers*, 150 U. S. 249, 260–1, 264–5; *The Hamilton*, 207 U. S. 398, 403, 405; *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347; *Wilson* v. *McNamee*, 102 U. S. 572, 574; *United States* v. *Smiley*, 6 Sawy. 640, 645. The court said, however, that while private and public ships of the United States on the high seas were constructively a part of the territory of the United States, indeed peculiarly so as distinguished from that of the States, Congress had always expressly indicated it when it intended that its laws should be operative on the high seas. The court concluded that because jurisdiction of criminal offenses must be conferred upon United States courts and could not be inferred, and because § 35, like all the other sections of c. 4, contains no reference to the high seas as a part of the *locus* of the offenses defined by it, as the sections in cc. 11 and 12 of the Criminal Code do, § 35 must be construed not to extend to acts committed on the high seas. It confirmed its conclusion by the statement that § 35 had never been invoked to punish offenses denounced if committed on the high seas or in a foreign country.

We have in this case a question of statutory construction. The necessary *locus*, when not specially defined, depends upon the purpose of Congress as evinced by the description and nature of the crime and upon the territorial limitations upon the power and jurisdiction of a

government to punish crime under the law of nations. Crimes against private individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement and frauds of all kinds, which affect the peace and good order of the community, must of course be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended to include those committed outside of the strict territorial jurisdiction, it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard. We have an example of this in the attempted application of the prohibitions of the Anti-Trust Law to acts done by citizens of the United States against other such citizens in a foreign country. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347. That was a civil case, but as the statute is criminal as well as civil, it presents an analogy.

But the same rule of interpretation should not be applied to criminal statutes which are, as a class, not logically dependent on their locality for the Government's jurisdiction, but are enacted because of the right of the Government to defend itself against obstruction, or fraud wherever perpetrated, especially if committed by its own citizens, officers or agents. Some such offenses can only be committed within the territorial jurisdiction of the Government because of the local acts required to constitute them. Others are such that to limit their *locus* to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute and leave open a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home. In such cases, Congress has not thought it necessary to make specific provision in the law that the *locus* shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense. Many of these occur in c. 4, which bears the title "Offenses

against the operations of the Government." Section 70 of that chapter punishes whoever as consul knowingly certifies a false invoice. Clearly the *locus* of this crime as intended by Congress is in a foreign country and certainly the foreign country in which he discharges his official duty could not object to the trial in a United States court of a United States consul for crime of this sort committed within its borders. Forging or altering ship's papers is made a crime by § 72 of c. 4. It would be going too far to say that because Congress does not fix any *locus* it intended to exclude the high seas in respect of this crime. The natural inference from the character of the offense is that the sea would be a probable place for its commission. Section 42 of c. 4 punishes enticing desertions from the naval service. Is it possible that Congress did not intend by this to include such enticing done aboard ship on the high seas or in a foreign port, where it would be most likely to be done? Section 39 punishes bribing a United States officer of the civil, military or naval service to violate his duty or to aid in committing a fraud on the United States. It is hardly reasonable to construe this not to include such offenses when the bribe is offered to a consul, ambassador, an army or a naval officer in a foreign country or on the high seas, whose duties are being performed there and when his connivance at such fraud must occur there. So, too, § 38 of c. 4 punishes the wilfully doing or aiding to do any act relating to the bringing in, custody, sale or other disposition of property captured as prize, with intent to defraud, delay or injure the United States or any captor or claimant of such property. This would naturally often occur at sea, and Congress could not have meant to confine it to the land of the United States. Again, in § 36 of c. 4, it is made a crime to steal, embezzle, or knowingly apply to his own use ordnance, arms, ammunition, clothing, subsistence, stores, money or other property of the United

States furnished or to be used for military or naval service. It would hardly be reasonable to hold that if any one, certainly if a citizen of the United States, were to steal or embezzle such property which may properly and lawfully be in the custody of army or naval officers either in foreign countries, in foreign ports or on the high seas, it would not be in such places an offense which Congress intended to punish by this section.

What is true of these sections in this regard is true of § 35, under which this indictment was drawn. We give it in full in the margin.[1]

[1] Section 35 of the Criminal Code, as amended October 23, 1918, c. 194, 40 Stat. 1015, is as follows:

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by

It is directed generally against whoever presents a false claim against the United States, knowing it to be such, to any officer of the civil, military or naval service or to any department thereof, or any corporation in which the United States is a stockholder, or whoever connives at the same by the use of any cheating device, or whoever enters a conspiracy to do these things. The section was amended in 1918 to include a corporation in which the United States owns stock. This was evidently intended to protect the Emergency Fleet Corporation in which the

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obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than $500 or imprisoned not more than two years, or both.

United States was the sole stockholder, from fraud of this character. That Corporation was expected to engage in, and did engage in, a most extensive ocean transportation business and its ships were seen in every great port of the world open during the war. The same section of the statute protects the arms, ammunition, stores and property of the army and navy from fraudulent devices of a similar character. We can not suppose that when Congress enacted the statute or amended it, it did not have in mind that a wide field for such frauds upon the Government was in private and public vessels of the United States on the high seas and in foreign ports and beyond the land jurisdiction of the United States, and therefore intend to include them in the section.

Nor can the much quoted rule that criminal statutes are to be strictly construed avail. As said in *United States* v. *Lacher*, 134 U. S. 624, 629, quoting with approval from Sedgwick, Statutory and Constitutional Law, 2d ed., 282: "penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment." They are not to be strained either way. It needs no forced construction to interpret § 35 as we have done.

Section 41 of the Judicial Code provides that "the trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought." The three defendants who were found in New York were citizens of the United States and were certainly subject to such laws as it might pass to protect itself and its property. Clearly it is no offense to the dignity or right of sovereignty of Brazil to hold them for this crime against the government to which they owe allegiance. The other defendant is a subject of Great Britain. He has never been apprehended, and it will be time enough to consider what, if any, jurisdiction the Dis-

trict Court below has to punish him when he is brought to trial.

The judgment of the District Court is reversed, with directions to overrule the demurrer and for further proceedings.

Reversed.